

Faulk, Camilla

From: Andrew Prazuch [AndrewP@KCBA.org]
Sent: Wednesday, April 30, 2008 4:25 PM
To: Faulk, Camilla
Subject: Comment to Proposed Changes to APR 11
Attachments: Final Signon Letter Re Rule 11 Changes April 2008.doc

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Please see the attached comment filed by the King County Bar Association, Seattle University School of Law, Washington Defense Trial Lawyers, and the Washington State Trial Lawyers Association.

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April 30, 2008

Mr. Ronald R. Carpenter
Clerk of the Supreme Court
State of Washington
P.O. Box 40929
Olympia, WA 98504-0929

Dear Mr. Carpenter:

In response to the proposed changes to Rule 11 of the Admission to Practice Rules (posted at www.courts.wa.gov/court_rules), the undersigned organizations express their opposition to the proposal of the Board of Continuing Legal Education, and ask that the Board instead conduct additional consultations with stakeholder groups on the issues prompting this proposed change.

Our opposition is focused in four specific areas.

Adult Learning

Leading writers about adult learning theory emphasize self-directed learning. This means the ability to identify educational goals and objectives, then direct energy toward those subjects. This does not mean a lack of educational structure, educational goals or purposeful interaction.¹

As adults, we are generally enclosed within our own self histories. We assimilate and gradually integrate behaviors, ideas, and values derived from others until they become so internalized that we define "ourselves" in terms of them. Unless an external source places before us alternative ways of thinking, behaving, and living, we are comfortable with our familiar value systems, beliefs and behaviors... This does not mean that the learner is essentially in total control of his/her learning activities but rather it is transactional, with the personalities, philosophies and priorities of the participants and the facilitators interacting continuously.²

This concept can be applied to firms and organizations where individuals assimilate to the group's behavior and decision-making. There is tremendous educational value in exposure to ideation, information and concepts outside of the organization or firm. Furthermore, the legal community benefits as a whole from wide dissemination of information. The current MCLE regulations encourage communication and exchange of information across the legal profession. The proposed rules do not.

Computer assisted learning, distance learning and webinars evolved out of correspondence courses to allow access to education across great distances. Today, on-line courses and webinars

¹ Christopher Roper 1999: *Foundations for Continuing Legal Education: A Guide to Research, Theories, and Ideas Underlying Continuing Education for Lawyers*

² *Id.*, quoting in part Brookfield, 1986: *Understanding and Facilitating Adult Learning*, Open University Press, Milton Keynes.

provide valuable time-saving efficiencies in addition to access but greatly reduce human interaction. There is strong educational value in human interaction as part of an organized system of learning. The current MCLE regulations encourage a balance among in-house, audio-visual and traditional live formats but the proposed MCLE regulations do not.

In short, self-directed learning continues as the foundation of adult learning theory. However, self-directed learning does not equate to isolation. Truly valuable education should incorporate varying delivery formats that engage the senses; account for differences in learning styles; incorporate interaction and introduce new points of view that challenge participants' existing line of thinking. As the American Bar Association has noted, "any activity that increases involvement and interactivity in the learning process increases retention."³

2. Mandatory Reporting

Issues of lawyer competence led to the creation of mandatory CLE reporting beginning in 1975. By 1991, thirty-one states enacted minimum or mandatory reporting regulations for CLE. Almost all states now require minimum CLE reporting.

There is little information about whether or not mandatory CLE reporting has improved lawyer competence. Some studies indicated that there was low participation in voluntary CLE offerings, which led to a conclusion that mandatory reporting regulations were needed.

The ALI and ABA studied these issues during the Arden House I, II and III summits, as well as an ABA Task Force during the 1990's. Those projects resulted in recommendations for more skills-based (interactive) programs rather than problem-solving (lecture or passive) programs, and more emphasis on lawyer values (professionalism).

At that time, there was a call to introduce new technology to enhance education, such as distance learning. The underlying theme of all these summit and task force efforts was to improve the quality of education with an eye toward increasing lawyer competence consistent with ever-changing legal landscapes. The ABA noted that "this holistic approach to lawyering will in the future help avoid the perpetuation of the notion that competence is simply a matter of attaining proficiency in specified skills."⁴

Law firms have traditionally provided training for new associates as necessitated by business management principles. Mandatory regulations were instituted to benefit the bar as a whole. Education in closed, isolated groups prevents the exchange of ideas across the profession that was at the heart of adopting mandatory CLE regulations, particularly where subjects such as professionalism are concerned. The current MCLE regulations encourage wide dissemination of information while the proposed regulations allow for isolation.

³ ABA Standing Committee on MCLE Summit 2001.

⁴ ABA Task Force: Narrowing the Gap 1992.

Concepts like professionalism are based on behavior and interaction with other people. While web-based formats can enhance concrete pieces of information and allow for wide dissemination of information, web-based formats leave out the necessary human interaction elements of learning new behaviors.

The current MCLE regulations create a holistic foundation of education by incorporating interaction across the profession, access through technology and specialized learning through in-house programs. The proposed regulations lose sight of the underlying basis for mandatory MCLE regulation.

3. Public Perception

Whether one agrees or disagrees with the concept that lawyers need mandatory CLE reporting requirements to encourage greater competence, it is important to consider public perception of the profession. Most professions, licensures and certifications require some form of continuing education.

There are no studies about public perception and continuing legal education specifically, but some level of distrust of the legal profession seems evident. Mandatory education requirements should provide some level of public assurance that the Bar encourages both competency and professionalism. To further public confidence, MCLE requirements should reflect high standards of educational content and delivery that are soundly based in adult learning theory and consistent with other professions of similar caliber.

The current MCLE regulations establish varying methods of delivery and open education which is consistent with other professional education requirements. The proposed regulations may appear as "cutting edge" but may lack the appearance of substance from the public's point of view.

4. Hardship

Specialty, local, and minority bar associations, as well as law schools in our area, may experience hardship as a result of the proposed MCLE regulations. Many organizations rely on educational outreach to exchange ideas related to their purpose. The resulting face-to-face interaction often leads to increased involvement and support from the legal community. Regulations that don't encourage interaction as a legal community can adversely impact these organizations.

In addition, an unfair advantage may result for large law firms as opposed to solo and small firm practitioners. If the number of educational offerings decreases as a result of the proposed regulations, the per-person rate of admission would necessarily rise. The impact of higher admission fees would be felt primarily by the solo and small firm lawyers. Subsequently, fewer offerings and higher costs could result in lower rates of voluntary participation and less topic variety for solo and small firm practitioners.

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Conclusion

It is our recommendation that the proposed MCLE regulations allowing lawyers to earn all their CLE credits in-house and/or through audiovisual be rejected and the balanced approach to education for lawyers reflected in the current regulations be maintained. We stand ready to work with the Board of Continuing Legal Education to address any concerns they have in this area.

Sincerely,

King County Bar Association
Seattle University School of Law
Washington Defense Trial Lawyers
Washington State Trial Lawyers Association

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